

smaller. When laws are ambiguous, I would make them certain. I hold it as a maxim of law, and I know it is the opinion of Montesquieu, the commentator from whom the gentleman from Charles (Mr. Edelin) has quoted, that the stability of law depends more upon the certainty of punishment than upon the nature of that punishment. No matter how severe the punishment stated in the law may be, so long as there is ambiguity in it, so long as there is a loophole in the law through which professional acumen might conduct the party safely, he has his hope that he shall at last escape the scaffold. But make punishment certain upon conviction, for I want gentlemen to notice that all this proceeding of the forfeiture of estate presupposes arrest, indictment, arraignment, trial, conviction; the section we propose to put into the Constitution of the State of Maryland presupposes all these things, the commission of the crime, arrest for it, indictment for it, prosecution and conviction for it, and then the sentence of the law, without ambiguity, speedy and sure. These are some of the reasons that will induce me to vote for the amendment of the gentleman from Baltimore city, (Mr. Stirling.)

Mr. MILLER. I do not propose to prolong this discussion very much, because my friend from Charles county, (Mr. Edelen,) has anticipated a great deal, I had intended to say, upon this question. The question before this Convention is, whether this body shall leave it within the power of the Legislature to punish the offence of treason by the absolute and unconditional forfeiture of all the property of the offender, both real and personal—the forfeiture to be absolute and unconditional, not confined to the life of the person convicted. The gentleman from Baltimore city (Mr. Stirling) says that the difference between us is but a small matter. I do not so regard it. The propositions which have been advanced, and the theories which have been advocated upon the side of the majority here, seem to me to involve questions of most momentous importance. The power is to be given to the Legislature of this State, by the proposed change in this article of the bill of rights, if it sees fit, to declare forfeited absolutely and forever the entire estate of the party convicted of the crime of treason.

Sir, these over-violent laws have never accomplished the purposes for which they were framed. I will refer to a memorable instance of the truth of that proposition, as illustrating this matter, from the pages of Blackstone. During the reign of Richard II. a law was passed which made the bare purpose and intent of killing or deposing the King, without any overt act, to be high treason. Now what does Blackstone say was the effect of such a law?

"And yet so little effect have over-violent

laws to prevent any crime, that within two years afterwards this very prince was both deposed and murdered, and, in the first year of his successor's reign, an act was passed, reciting 'that no man knew how he ought to behave himself, to do, speak, or say, for doubt of such pains of treason; and, therefore, it was accorded, that in no time to come any treason be judged, otherwise than was ordained by the statute of king Edward the III.'"

That is the history of one instance of over-violent laws being passed for the punishment of this offence of treason, which I agree is the highest offence which a citizen or subject can commit. Justice Story in his commentary upon that clause of the Constitution about which so much has been said, declares it to be bad policy to pass such laws as these. What would be the result of such a law as gentlemen here advocate? You propose to forfeit absolutely all the estate real and personal of the traitor, and deprive his offspring to the remotest generation of any chance of recovering his property, and thus you make those descendants forever the enemies of your Government, and instead of bringing about peace, tranquility and prosperity, you have in that large class of persons the perpetual and bitter enemies of your Government. You continue the strife by supplying and continuing the incentive to make war upon it. Judge Story declares and cites all that has been said in favor, all that can be said in favor of this absolute and unconditional forfeiture of property for the crime of treason. He says—vol. 2, page 170, Story on the Constitution:

"The reasons commonly assigned for these severe punishments, beyond the mere forfeiture of the life of the party attainted, are these: By committing treason the party has broken his original bond of allegiance, and forfeited his social rights. Among these social rights, that of transmitting property to others is deemed one of the chief and most valuable. Moreover, such forfeitures, whereby the posterity of the offender must suffer, as well as himself, will help to restrain a man, not only by the sense of his duty, and dread of personal punishment, but also by his passions and natural affections; and will interest every dependent and relation he has to keep him from offending."

Has anything been said on this floor in favor of this absolute and unconditional forfeiture beyond what Judge Story has here stated? Has any argument of more force been advanced than those he here recites? And what is his comment upon them?

"But this view of the subject is wholly unsatisfactory. It looks only to the offender himself, and is regardless of his innocent posterity. It really operates as a posthumous punishment upon them; and compels them to bear not only the disgrace naturally at-